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10/018,115	06/14/2002	Henricus Wilhelmus Theodorus Janssen	EF377397961US	1559

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Baker Botts
30 Rockefeller Plaza
New York, NY 10112

EXAMINER

VALENTI, ANDREA M

ART UNIT	PAPER NUMBER
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3643

DATE MAILED: 04/10/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/018,115

Applicant(s)

JANSSEN, HENRICUS
WILHELMUS THEODORUS

Examiner

Andrea M. Valenti

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 06 February 2006.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-7,9,16-18 and 21-31 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-7,9,16-18 and 21-31 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- ☒ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____
- ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- ☐ Notice of Informal Patent Application (PTO-152)
- ☐ Other: _____

DETAILED ACTION

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-7,9,16-18 and 21-31 are rejected under 35 U.S.C. 103(a) as being unpatentable over Dutch-Netherlands patent application NL8700470 (English translation 17 August 2005) to Dekker in view of U.S. Patent No. 3,958,365 to Proctor.

Regarding Claims 1, 16 and 26, Dekker teaches a method for manufacturing a plant support, wherein a box shaped element is manufactured having at least two partially open walls (Dekker Fig. 3 #4 is made of wire gauze so it is at least partially open) and an upper surface (Dekker Fig. 1 #2 optional, page 2, last paragraph, third line); and wherein a substantially vertically extending guide element (Dekker Fig. 3 #5) is mounted on the box-shaped element, said guide element extending above the surface of the box-shaped element and wherein placement of the box-shaped element on or in ground or growth medium facilitates growth of the roots outside of said plant support (Dekker page 2, second paragraph, first sentence; page 4, first paragraph, line 8; page 4, last paragraph, last line).

Dekker is silent on the box-shaped element being at least partially covered with a substantially biodegradable covering material, said covering material being provided in such a manner that it at least partially covers the partially open walls and such that the

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walls are soil-proof but roots of a plant, growing in the box-shaped element grow at least partially through the covering material and the wall to the outside of the plant support.

However, Proctor teaches a wire basket liner (Proctor Col. 2 line 64-65) that is substantially biodegradable (Proctor teaches the covering is made of coco fiber and latex Col. 1 line 40 and 33; U.S. Patent No. 6,219,968 to Belger et al is cited merely as an example of a teaching reference of the general knowledge in the art that coco fibers and latex are biodegradable Belger Col. 1 line 14-15 and line 26-27) and the walls are soil-proof but the roots of the plant grow at least partially through the covering material (Proctor Col 2 line 55-57 teaches it is desired that the roots grow through opening #17).

It would have been obvious to one of ordinary skill in the art to modify the teachings of Dekker with the teachings of Proctor at the time of the invention for the known advantage of efficient means of conserving moisture in the soil in which plants grow as taught by Proctor (Proctor Col. 1 line 29-30) to promote healthy plant and root development.

Regarding Claim 2, Dekker as modified teaches wherein the box-shaped element is at least substantially manufactured from material having a mesh-shaped structure (Dekker Fig. 3 #4).

Regarding Claim 3, Dekker as modified teaches wherein the box-shaped element is substantially manufactured from wire material (Dekker page 2, third paragraph, first sentence "wire gauze").

Regarding Claims 4, 5 and 18, Dekker as modified teaches wherein said covering material is manufactured from at least natural fibers and a binding agent (Proctor coco fibers and latex Col. 1 line 40 and 33; Col. 1 line 38-39).

Regarding Claim 6, Dekker as modified teaches the covering material comprises a sheet-shaped element which is placed into a covering of the box-shaped element (Proctor Fig. 4 is a sheet), but is silent on folding it. However, it would have been obvious to one of ordinary skill in the art to further modify the teachings of Dekker at the time of the invention since fold is taken to mean merely crease, it would be obvious to bend or crease the sheet to properly and efficiently fit the dimensions of the container.

Regarding Claim 7, Dekker as modified is silent on the covering material is woven into the wall of the box-shaped element. However, applicant does not provide any criticality for the woven nature of the covering material in the specification. It would have been obvious to one of ordinary skill in the art to further modify the teachings of Dekker at the time of the invention since the modification is merely an engineering/manufacturing design choice to enhance the aesthetical appeal of the container by creating a weaved pattern or as a means to keep the liner in place to prevent any undesirable shifting during transport and does not present a patentably distinct limitation.

Regarding Claim 9, Dekker as modified teaches wherein the box-shaped element is substantially disposed above the ground, such that the outer side of at least a longitudinal wall thereof is free, whereupon each plant is treated such that root growth occurs, at least partly extending through the covering material, such that the ends of a

number of roots are located approximately in the outer face of the wall and after sufficient growth of the plant the box-shaped element with each plant is picked up and moved to another position; wherein placement of the box-shaped element on or in ground or growth medium facilitates growth of the roots outside of the plant support (Dekker page 2, second paragraph, first sentence; page 2, third paragraph, first sentence; page 4 first paragraph, greenhouse is above ground and Fig. 4 show it can also be placed below ground).

Regarding Claim 17, Dekker as modified teaches that the covering material inherently at least temporarily prevents root growth to the outside of the box-shaped element (Proctor's covering inherently temporarily prevents growth to the outside because it is an element of resistance in the roots path that the roots have to grow around and through).

Regarding Claims 21 and 27, Dekker as modified teaches mesh-shaped box-shaped element and guide element (Dekker #4 and 5), but is silent on explicitly teaching that they are manufactured in one piece. However, it would have been obvious to one of ordinary skill in the art to further modify the teachings of Dekker at the time of the invention since the modification is merely an engineering design choice of manufacturing known elements in an integral configuration [*In re Larson*, 340 F.2d 965, 967, 144 USPQ 347, 349 (CCPA 1965)] modified for the advantage of preventing separable pieces from getting misplaced and does not present a patentably distinct limitation.

Regarding Claim 22, Dekker as modified teaches the plant support is demountable (Dekker Fig. 3 shows the plant support without the guide element thus it is demountable).

Regarding Claim 23, Dekker as modified teaches the guide element is detachably mounted the bottom of the box-shaped element (Dekker page 4, last paragraph, teaches that the box-shaped element can take on many differently embodied guide element; and fig. 2 shows the support without the guide element). Dekker as modified is silent on explicitly teaching the guide element is mounted adjacent to the bottom. However, it would have been obvious to one of ordinary skill in the art to further modify the teachings of Dekker at the time of the invention since the modification is merely the shifting location of a known element performing the same intended function modified as an engineering design choice to provide more support to the over structure to prevent it from being too top heavy [*In re Japikse*, 181 F.2d 1019, 1023, 86 USPQ 70,73 (CCPA 1950)] and does not present a patentably distinct limitation.

Regarding Claims 24 and 29, Dekker as modified teaches providing a plurality of box-shaped elements (Dekker Fig. 4 #4); a guide element on each box (Dekker Fig. 4 #5). Dekker teaches (Dekker page 4, last paragraph) that the box-shaped element can take on many differently embodied guide elements and various combinations of the container to make partitions, etc), but is silent on explicitly teaching placing them juxtaposing end-to-end to form a closed elongated hedge. However, it would have been obvious to one of ordinary skill in the art to further modify the teachings of Dekker at the

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time of the invention since the modification is merely an obvious re-configuration of the known elements to produce a longer partition to disguise a large area of a farmyard when desired.

Regarding Claim 25, Dekker as modified teaches creating a green wall (Dekker page 4, third paragraph), but is silent on explicitly teachings that the vegetation is intended to grow up both sides of the guide element. However, it would have been obvious to one of ordinary skill in the art to further modify the teachings of Dekker at the time of the invention since it is old and notoriously well-known in the art of plant husbandry to have plants grow up both sides of a vertical support to create a full and lush visual/aesthetic effect (trellis, pergolas, etc).

Regarding Claim 28, Dekker as modified teaches the box-shaped elements **may be (capable of)** being positioned end to end for form an elongated wall (Dekker page 4, third paragraph).

Regarding Claims 30 and 31, Dekker as modified does not explicitly teach the step of clipping plants above the upper edge of the guide element or plants don't grow above the guide element. However, these steps are available knowledge to one of ordinary skill in the art. It is old and notoriously well-known in plant husbandry to shape plants in various configurations, this art is known as topiary or plant sculpturing. Also, plants (e.g. grape vines) are groomed at the top to encourage the plant to grow full and bushy. The desired height is a subjective choice, some people like their hedges higher than others for more privacy or for an aesthetic design (merely cited as an example of this known knowledge U.S. Patent No. 679,976 and U.S. Patent No. 502,058). It would

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have been obvious to one of ordinary skill in the art to further modify the teachings of Dekker at the time of the invention for a desire aesthetic appearance and for healthy plant development.

The ability of the plant to fall back against the guide is merely a characteristic of the particular plant variety selected and does not pertain to the structure of the device. One of ordinary skill the art would be motivated to have this particular effect for the advantage of a topiary design or a full/bushy appearance. Do to the nature of gravity and the selected plant variety, if it is not vertically supported or the plant exceeds the support it is capable of falling down and resting on the guide at some point in time.

Response to Arguments

Applicant's arguments with respect to claims 1-7,9,16-18 and 21-31 have been considered but are moot in view of the new ground(s) of rejection.

The plant container structure claimed by applicant, i.e. box-shaped plant support and vertical guide member both of wire-mesh, is well-known in the art. Examiner maintains that merely modifying this known structure with the addition of a notoriously old and well-known plant container liner is an obvious modification for one of ordinary skill in the art. Proctor teaches that it is old and notoriously well-known to line wire baskets/wire plant containers with a biodegradable liner and the concept that is desirable for plants to grow through the liner via element #17. Also, since the components of Proctor's liner, i.e. coco fiber and latex, are identical to that claimed by applicant, the liner of Proctor must be capable of performing the same function since its structural make up is the same as applicants. Proctor teaches an alternate embodiment

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where the liner is optionally dipped in plastic. This option does not teach away from the Proctor embodiment of purely coco fiber and latex enabling roots to grow there through. The examiner would also like to point out that some plastics are in fact biodegradable (e.g. pervious cited prior art reference U.S. Patent No. 3,921,333).

Examiner maintains that it is old and notoriously well-known to line wire shaped plant containers with biodegradable materials. The art is saturated with burlap lined containers. By definition, burlap is a coarse heavy plain-woven fabric usually made of jute and hemp. The natural fibers jute and hemp are inherently biodegradable. Furthermore, U.S. Patent No. 5,309,673 to Stover et al teaches that it is known to line plant containers with a biodegradable coco fiber liner for the known advantage of providing the proper moisture and nutrients to the plant for healthy development (Stover Col. 1 line 10-13; Col. 1 line 31; Col. 2 line 5-8; Fig. 6; col. 6 line 5; Col. 6 line 24, line 55-60). Proctor teaches the known advantage of lining plant containers for conserving moisture. Thus, the examiner maintains there is sufficient motivation in the art to modify the teachings of Dekker with the teachings of Proctor.

Conclusion

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure: U.S. Patent No. 6,219,968 and U.S. Patent No. 5,309,673.

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP

§ 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Andrea M. Valenti whose telephone number is 571-272-6895. The examiner can normally be reached on 7:00am-5:30pm M-Th.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Peter M. Poon can be reached on 571-272-6891. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Andrea M. Valenti
Patent Examiner
Art Unit 3643

06 April 2006